

**UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
(Big Stone Gap Division)**

MELINDA SCOTT,

Plaintiff,

v.

WISE COUNTY DEPARTMENT OF
SOCIAL SERVICES, *et al.*,

Defendants.

Case No. 2:20-cv-00014-JPJ-PMS

**MOTION FOR LEAVE TO FILE
SUPPLEMENTAL AUTHORITY**

NOW COMES Defendant Joshua Moon, by counsel, and submits this Motion for Leave to File Supplemental Authority. In support of this Motion, Defendant Moon states as follows:

- 1) Although the Plaintiff's Complaint is not a model of clarity and subsequent filings have only served to muddy the waters, it is apparently her argument that Section 230 of the Communications Decency Act is relevant to this case. Indeed, the Plaintiff noted in the document filed at ECF No. 68 that she will raise arguments related to Section 230 on Appeal.
- 2) Although Defendant Moon in no way concedes Plaintiff's claims relating to Section 230, it is nevertheless relevant that another federal district court ruled yesterday that Defendant Moon's website is immune from liability under Section 230.¹ Specifically, the

¹ This Court previously rejected Ms. Scott's Communications Decent Act arguments in *Scott v. Moon*, No. 2:19CV00005, 2019 U.S. Dist. LEXIS 11856 (W.D. Va. Jan. 24, 2019), *aff'd in Scott v. Moon*, 773 F. App'x 138 (4th Cir. 2019), *cert. denied at Scott v. Moon*, 140 S. Ct. 478 (2019). The Utah court's decision is in accordance with and buttresses the previous conclusions of this Court and the Fourth Circuit that Mr. Moon is immune from liability under Section 230.

U.S. District Court for the District of Utah held that “Section 230 protects defendants like Kiwi Farms and Mr. Moon” from liability. *Greer v. Moon et al.*, Case No. 2:20-cv-00647-TC-JCB (D. Utah, Sept 21, 2021) (attached for ease of reference as Exhibit A).

- 3) This Court has routinely accepted notices of supplemental authority when new precedent becomes available after a motion is filed. *See, e.g., Graham v. Consolidation Coal Co.*, No. 1:13CV00011, 2014 U.S. Dist. LEXIS 35046, fn.4 (W.D. Va. Mar. 18, 2014), *Lewis v. Nationstar Mortg., LLC*, Civil Action No. 3:13CV00026, 2014 U.S. Dist. LEXIS 11113 (W.D. Va. Jan. 29, 2014), *United States v. Reeves*, No. 6:02-cr-70045, 2019 U.S. Dist. LEXIS 214351 (W.D. Va. Dec. 12, 2019). Because the precedent Defendant Moon cites herein was handed down only yesterday, it was unavailable to him when he initially filed his Motion to Require an Appeal Bond (ECF No. 65) and his Reply Brief (ECF No. 72).
- 4) To the extent that the Plaintiff in this case seeks to raise any Section 230 arguments on appeal, her claims would be foreclosed in the 4th Circuit for the same reason the *Greer* plaintiff’s claims were foreclosed in Utah under controlling 10th Circuit precedent. As such, this Court should consider the Utah decision as further evidence that Ms. Scott’s claims in this Court and on appeal are frivolous and in bad faith. The *Greer* decision should be considered as further grounds militating in favor of an appeal bond in this case.

WHEREFORE Defendant Moon moves that this Court grant him leave to file the instant Motion and consider the attached decision of the U.S. District Court for the District of Utah in ruling upon the motion filed at ECF No. 65.

Respectfully submitted this the 22nd day of September, 2021,

JOSHUA MOON

By Counsel:

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Certificate of Service

I hereby certify that I will file a true and correct copy of the foregoing document with the Court's CM/ECF system, which will electronically serve counsel of record. I will also deposit a true and correct copy of the foregoing document into the U.S. Mail, with First Class postage prepaid, directed to:

Melinda Scott
2014PMB87
Post Office Box 1133
Richmond, VA 23218

Dated: September 22, 2021

/s/Matthew D. Hardin
Matthew D. Hardin
Counsel for Joshua Moon